Supreme Court, U.S.
FILED

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SUPREME COURT OF THE UNITED STATES

October Term, 1995

MARION HOMMERING,

Petitioner,

v.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut corporation,

Respondent,

RIDGEWAY ENTERPRISES, INC.,
a South Dakota corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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QUESTIONS PRESENTED FOR REVIEW

I: The Minnesota Corporate Farming legislation grants a right of first refusal so that a former farmer might repurchase that person's farmland at the same price as a prospective purchaser; and a violation of Minnesota Statutes, Section 500.24, demonstrates a prima facie breach of duty in a negligence per se cause of action.

II: A private attorney general cause of action under Minnesota Statutes, Section 500.24, should exist where the person bringing suit, a member of class protected by the statute, has been harmed by direct violation of the statute.

III: The Due Process rights of Marion Hommerding were violated and she suffered discrimination when the trial court granted summary judgment on the issue of an uncontroverted failure by defendants to give Marion Hommerding the right to rent her former farm property from The Travelers Insurance Company; where defendants failed to submit affidavits or any other documentary evidence to controvert Ms. Hommerding.

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Marion Hommerding respectfully petitions for a writ of certiorari to review a judgment entered by the Minnesota Court of Appeals.

OPINIONS BELOW

This Petition seeks review of the Order of the Minnesota Supreme Court of the State of Minnesota declining review, Marion Hommerding v. The Travelers Insurance Company, a Connecticut Corporation, and Ridgeway Enterprises, Inc., a South Dakota Corporation, Appellate Case No.C6-94-1843, and the unpublished underlying Minnesota Court of Appeals decision, bearing the same case caption and appellate case number. The decisions of the trial court, the Minnesota Court of Appeals, and the Minnesota Supreme Court have been reproduced in the Appendix.

STATEMENT OF JURISDICTION

Petitioner Marion Hommerding seeks review of the decision of the Minnesota Court of Appeals, filed January 10, 1995, and the denial of review of the Minnesota Supreme Court dated and filed March 14, 1995. This Supreme Court of the United States has jurisdiction based on 28 U.S.C., Section 1257.

STATEMENT OF THE CASE

This case came first to the Minnesota Court of Appeals from Stearns County District Court after a successful motion to dismiss and for summary judgment, Hommerding v. The Travelers Insurance Co. et al., District Court File No. CO-94-1843, brought by defendants.

The Minnesota Court of Appeals in an unpublished opinion held that there is no statutory, private remedy under the Minnesota Corporate Agricultural Statute; no negligence per se action under the

same statute; no occasion to act as a private attorney general; and that Marion Hommerding did not raise the issue of failure to offer to rent to her family's former farmland.

STATEMENT OF FACTS

In 1976, Hommerding and The Travelers Insurance Company entered into a mortgage secured by Hommerding's farmstead. Seven years later, Travelers foreclosed on the property and purchased the land by bidding the remaining mortgage debt.

Minnesota Statutes offers the "right of first refusal," permitting a former owner to rent or buy back that person's former land at the same price bid by a prospective purchaser, Minn. Stat., Section 500.24, subd. 6.

The Travelers Insurance Company did not give Marion Hommerding the right of

first refusal to rent the land in 1987.

In 1988, Travelers ostensibly extended Mrs. Hommerding the statutory right of first refusal, but actively interfered with her exercising this right. Ross House, Traveler's agent-broker, refused Hommerding and lenders access to the land for inspection. Fire damage to outbuildings had made inspection imperative. Marion wrote to Travelers complaining of her inability to peruse the land and so complete financing.

Marion Hommerding had reached an agreement with Northern States Power Company to meet the down payment and a sister-in-law had offered to loan the balance so the funds would have been available for the purchase if Hommerding could have obtained access to the property.

Travelers marketed title to Hommerding's land to Ridgeway Enterprises, Inc., a South Dakota corporation. The transfer was illegal on its face since Minnesota law prohibits a foreign corporation from holding more than 1500 acres of farmland, Section 500.24, subd. 2(d) (6).

Other anomalies were apparent: The purchase documents falsely assert Ridgeway Enterprises, Inc., is a Minnesota corporation. Also, this South Dakota entity has two classes of stock, contrary to Minnesota Statutes, Section 500.24, subd. 2(d)(3).

Ridgeway Enterprises, Inc., also failed to file the corporate farm report as required under Minnesota law. Richard Prim, from the Minnesota Department of Agriculture, indicated that Ridgeway had not filed such a report until January 7,

1991, although this entity owned agricultural land in Minnesota since least April, 1988.

REASONS FOR GRANTING THE WRIT

Minnesota Statutes, Section 500.24, indicates that the corporate farming statute serves to protect family farmers:

> Subdivision 1. Purpose. The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

In the present case, The Travelers Insurance Company had the right to purchase the Hommerding's real property at the foreclosure sale in Stearns County, despite the statutory prohibition against corporate ownership of farmland, Minnesota Statutes, Section 500.24; see

also, Travelers Ins. Co. v. Norwest Bank of Rochester N.A., 706 F.Supp. 695 (D. Minn. 1989). However, this farmland under most circumstances must then be sold within five years or be forfeited. The former farmer has the first right of refusal to repurchase this land.

But one must assume that the prospective sale would be within the law. In this case, Ridgeway could not legitimately purchase Hommerding's former land since this purchase could not be completed within the legal ambit of the corporate agricultural statute.

Ridgeway did not meet these statutory criteria:

> (d) "Authorized farm corporation" means a corporation meeting the following standards:
>
> * * *
>
> (3) it does not have more than one class of shares; and
>
> * * *
>
> (5) shareholders holding 51

> percent or more of the interest in the corporation must be residing on the farm or actively engaging in farming; (6) the authorized farm corporation, directly or indirectly, owns or otherwise has an interest, whether legal, beneficial, or otherwise, in any title to no more than 1,500 acres of real estate used for farming or capable of being used for farming in this state....

Deeds and an affidavit submitted to the trial court show that Ridgeway Enterprises holds in its own name more than 1,500 acres of farmland; there is no evidence that shareholders holding more than 51% reside on the farm or are actively engaged in farming; and the corporation has more than one class of shares. These facts are sufficient to disallow Ridgeway Enterprises from purchasing of Ms. Hommerding's former land.

The sale to Ridgeway was prima facie

invalid; the offer of the right of first refusal given to Hommerding was also invalid. Travelers Ins. Co. v. Horseshoe Lake Farms, Inc., 456 N.W.2d 453 (Minn. Ct. App. 1990), shows that failure to offer a proper right of first refusal may well void such a sale.

In Johnson v. Farmers & Merchants State Bank, 320 N.W.2d 892 (Minn. 1982), the Minnesota Supreme Court held that

> ...a violation of a legislative enactment can be evidence of negligence if (1) the intent of the statute is to protect a class of which plaintiff is a member, but only if (2) the plaintiff's injury involves an invasion of the particular interest protected by the statute, (3) was caused by the particular...form of harm against which the enactment was designed to give protection and (4) it was proximately caused by its violation.

The right of first refusal legislation has as its essential purpose permitting family farmers to buy back

their farmland. Marion Hommerding belongs to this protected class. No person other than family farmers can repurchase their land when another buyer steps forward.

Defendants did not participate in a sale which met the requirements of Minnesota Statutes, Section 500.24, the same statutory section which gives the right of first refusal.

The breach of a statutory rule is often used as a benchmark to prove a breach of the duty included as a requisite element of negligence. In Osborne v. McMasters, 40 Minn. 103, 41 NW 543, 543-44 (1889), the Minnesota Supreme Court related that

> [i]t is now well settled, certainly in this state, that where a statute... imposes upon any person a specific duty for the protection or benefit of others, if he neglects to perform that duty he is liable

> to those for whose protection or benefit it was imposed for any injuries of the character which the statute...was designed to prevent, and which were proximately produced by such neglect.
>
> * * *
>
> Negligence is the breach of a legal duty. It is immaterial whether the duty is one imposed by the rule of common law requiring the exercise of ordinary care not to injure another, or is imposed by a statute designed for the protection of others. In either case the failure to perform the duty constitutes negligence, and renders the party liable for injuries resulting from it. The only difference is that in the one case the measure of the legal duty is to be determined upon common-law principles, while in the other the statute fixes it, so that the violation of the statute constitutes conclusive evidence of negligence, or, in other words negligence per se. ...All that the statute does is to establish a fixed standard by which the fact of negligence may be determined.

The Minnesota Court of Appeals held that Marion Hommerding is not a member of the protected class despite the clear

language of the statute and that negligence per se did not apply. This decision mocks common sense. The right of first refusal has only an indirect benefit to the people of Minnesota as a whole, but the same statute has a direct, singular benefit to Marion Hommerding. It is likely that no one else in this State could have directly benefitted from Marion Hommerding's right of first refusal.

Justice Byron White's dissent in The Florida Star v. B.J.F., 491 U.S. 524, 548 (1989), notes that "[p]ermitting liability under a negligence per se theory does not mean that defendants will be held liable without a showing of negligence, but rather, that the standard of care has been set by the legislature, instead of the courts."

In this case, the Minnesota

legislature has determined actionable conduct, permitting litigation under the right of first refusal legislation, subd. 6, and making the failure to file an annual corporate farm report a gross misdemeanor. Defendant Ridgeway also failed to file this report which would have made critical information available to the public, including Marion Hommerding.

Marion Hommerding has the right to use the violation of the Corporate Agricultural statute, including the right of first refusal legislation by defendants as a breach of the duty owed her by defendants.

The Minnesota Court of Appeals has held in the present case that although the Attorney General has the right to sue under the statute, an individual farmer may not. This holding works to strip an

aggrieved individual of the right to litigate personally for that individual's own rights when the Attorney General does not act. This makes no sense, particularly where the Attorney General has the right to "[enjoin] any prospective or threatened violation [] by an action brought by the attorney general in the manner provided by law," Section 500.24, subd. 5.

The purpose of the Minnesota private attorney general statute is to "eliminate financial barriers to the vindication of a plaintiff's rights * * * and to provide incentive for counsel to act as private attorney general." Liess v. Lindemyer, 354 N.W.2d 556, 558 (Minn.Ct.App.1984) (referencing the Consumer Fraud Statute).

> Subdivision 3a of the "Private Attorney General Statute" then provides an incentive for private parties and their counsel to assist the

> attorney general. It provides that "any person injured by a violation of any of the laws referred to in subdivision 1" may bring a civil action and recover not only damages and taxable costs but costs of investigation and attorney fees (emphasis added).

Here in Hommerding, the applicable statute is Minnesota Statutes, Section 8.31, subd. 1 (1984), which directs that the Attorney General shall "investigate violations of the law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively * * * " Subdivision 3a, sometimes called the "private attorney general provision," then says, "In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages" plus costs,

investigation expenses and attorney fees. Id., subd. 3a. (Emphasis added,)

If the attorney general has an absolute obligation to enforce this provision, surely an aggrieved farmer whose wants a fair opportunity to repurchase his land has the right to enforce the law as well.

Minnesota Statutes, Section 500.24, has acted as the legal basis for many decisions: Lilyerd v. Carlson, including the most recent decision, 499 N.W.2d 803 (Minn. 1993), where the failure to grant a right of first refusal upended a sale. Crowell v. Delafield Farmers Mutual Fire Insurance Co., 463 N.W.2d 737 (Minn. 1990), points out that the right of first refusal constitutes in itself an insurable interest. See also Kjesbo v. Ricks, 506 N.W.2d 326 (Minn. Ct. App.1993), where the Court of Appeals

remanded to the trial court for a factual determination whether a right of first refusal had been validly exercised.

Finally, Marion Hommerding has been discriminated against in that her constitutional rights to due process have been ignored by the Courts of the State of Minnesota. She has even been unable to obtain a judgment in her favor where the only evidence before the courts was her singular evidence that she had not been given the opportunity to rent her former acreage, again contrary to the right of first refusal laws. Hommerding submitted an affidavit dated June 20, 1994, which verified her original Complaint, pages 20 and 21 to the appendix in the Brief of Appellant Marion Hommerding submitted to the Minnesota Court of Appeals. The Complaint, paragraph 8, states that "The Travelers

Insurance Company failed to provide the Plaintiff Marion Hommerding with her rights of first refusal to lease agricultural real estate for the 1987 crop year, to the detriment and damage of the Plaintiff Marion Hommerding." The Minnesota Court of Appeals thought that the issue had never been raised, but the Court's report is inaccurate.

Travelers and Ridgeway Enterprises' motions had were not supported by affidavits. Marion Hommerding's verified Complaint must be considered as true. Northern States Power Company v. Franklin, 122 N.W.2d 26, 265 Minn. 391 (Minn. 1963).

The facts stated in the Complaint have never been questioned or criticized by Travelers or by Ridgeway Enterprises, Inc. One has to assume, and, indeed the law assumes, that there is no evidence to

support their position.

CONCLUSION

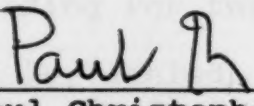
No one at any level of the Minnesota Courts has given Marion Hommerding the justice she asks. Instead, a powerful insurance company and a large agri-business have run roughshod over her rights with the acquiescence of the Courts.

Marion Hommerding asks this United States Supreme Court to come to her aid.

The Writ for Certiorari should issue.

Dated at Minneapolis, this 9th day of June, 1995.

PAUL CHRISTOPHER ENGH, LAWYER



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STATE OF MINNESOTA

IN SUPREME COURT

C6-94-1843

Marion Hommerding,

Appellant,

vs.

The Travelers Insurance Company,
a Connecticut corporation,

Respondent,

Ridgeway Enterprises, Inc.,
a South Dakota corporation,

Respondent.

O R D E R

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Marion Hommerding for further review be, and the same is, denied.

Dated: March 14, 1995

BY THE COURT:

Chief Justice

STATE OF MINNESOTA

IN COURT OF APPEALS

Stearns County
District Court #CO94756 Lansing, Judge

Marion Hommerding,

Appellant,

vs.

The Travelers Insurance
Company, a Connecticut
corporation,

Respondent,

Ridgeway Enterprises, Inc.,
a South Dakota corporation,

Respondent.

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Filed: January 10, 1995
Office of Appellate Courts

Considered and decided by Amundson, Presiding Judge, Lansing, Judge, and Mansur, Judge. *

UNPUBLISHED OPINION

LANSING, Judge

This appeal challenges a district court order of summary judgment denying relief to a family farmer seeking to enforce Minn. Stat. § 500.24. The district court found that there is no private cause of action under Minn. Stat. § 500.24 and that the claims of negligence, fraud, and interference with economic opportunity were insufficiently pleaded. We affirm.

FACTS

In 1984 Travelers Insurance Company foreclosed on farm property held as

security for two loans made to Marion Hommerding. When Ridgeway Enterprises made an offer to buy the land, Travelers gave Hommerding a right of first refusal as required by statute. Hommerding accepted it but later failed to make a payment required by the contract. Hommerding claims that Travelers prohibited her potential mortgagee from inspecting the property and subverted her attempt to finance the sale. She also claims that Travelers withheld Ridgeway's identity as the buyer. Travelers subsequently sold the property to Ridgeway.

Hommerding sued Travelers and Ridgeway, alleging statutory violations, fraud and negligence. The district court granted summary judgment for Travelers and Ridgeway, ruling that Hommerding's complaint failed to sufficiently state a

cause of action for negligence, fraud, or interference with economic opportunity, and that Hommerding lacked standing to enforce Minn. Stat. § 500.24.

D E C I S I O N

I

In her complaint Hommerding asserts a cause of action under Minn. Stat. § 500.24. When there is no underlying common law cause of action, a private cause of action exists only when the legislature explicitly provides for one in the statute's language or clearly implies one. **Bruegger v. Faribault County Sheriff's Dept**, 497 N.W.2d 260, 262 (Minn. 1993); see also **Flour Exchange Building Corp. v. State**, ____ N.W.2d____ (Minn. App. Dec. 6, 1994). Minn. Stat. § 500.24 does not explicitly authorize a private cause of action.

To determine whether to imply a

private cause of action, we consider whether the plaintiff belongs to the class for whose special benefit the statute was enacted, whether the legislature indicated its intent to create or deny a remedy, and whether implying a remedy would be consistent with the underlying purpose of the legislative scheme. **Counties of Blue Earth v. Minnesota Dept. of Labor and Industry**, 489 N.W. 2d 265, 268 (Minn. App. 1992) (citing **Cort v. Ash**, 422 U.S. 66, 78, 95 S. Ct. 2080, 2088 (1975)). The threshold question is whether the plaintiff belongs to the specially protected class. **See Cort**, 422 U.S. at 78, 95 S.Ct. at 2088.

Although family farmers derive some benefit from the statute's protection of family farms, the benefit is indirect. The statute provides that "it is in the

interests of the state" to encourage family farming and to promote the stability of rural society in Minnesota. Minn. Stat. § 500.24, subd. 1 (1992). The benefits to family farmers of restrictions on corporate ownership of farm land serve the state's overall interests. **See Flour Exchange**, ____ N.W.2d ____(owner of historic building derives incidental benefit of statute promoting state use of these buildings); **Blue Earth**, 489 N.W.2d at 268 (counties are indirect beneficiaries of public wage statute because intended to protect public and persons working on public works).

Even if we determined that Hommerding was a member of the class specially protected by the statute, we could not imply a private cause of action because the remaining two factors are not

met. First, there is no indication of a legislative intent to create a private remedy under Minn. Stat. § 500.24. Rather than providing for a private cause of action, the legislature delegated enforcement powers to the attorney general, and penalized violators with divestiture of the property within five years. Minn. Stat. § 500.24, subd. 5 (1992). **See Semrad v. Edina Realty, Inc.**, 493 N.W.2d 528, 532 (Minn. 1992) (finding no implied private cause of action when statute expressly granted enforcement powers to Commissioner of Commerce). Second, creating a private remedy is not consistent with the statute's provisions for protecting the state's interest in family farming, by having the state enforce the statute, rather than individuals. Hommerding also argues that the district court erred by

not using Minn. Stat. § 8.31 to imply a private cause of action under Minn. Stat. § 500.24. Minn. Stat. § 8.31 enumerates specific subjects and statutes under which a private cause of action arises, none of which expressly include Minn. Stat. § 500.24 or the issues it seeks to redress. See Minn. Stat. § 8.31, subds. 1 & 3a (1992). Although Minn. Stat. § 8.31's list of applicable statutes is not exclusive, the supreme court has refused to extend this statute to imply an additional private cause of action. **Monis v. American Family Mut. Ins. Co.**, 386 N.W.2d 233, 236 (Minn. 1986) (reasoning that without clear legislative intent to change the common law, the Unfair Claims Practice Act does not allow a private cause of action).

Because of the plain meaning of both Minn. Stat. § 500.24, subd. 5, and Minn.

Stat. § 8.31, subds. 1 & 3, we decline to create a new statutory cause of action absent an express or implied legislative intent. The district court appropriately granted summary judgment on this claim. **See Holiday Acres No.3 v. Midwest Fed. Savings & Loan Assn**, 308 N.W.2d 471, 480 (Minn. 1981).

Hommerding further argues that Travelers and Ridgeway failed to comply with Minn. Stat. § 500.24, rendering both negligent per se. Even if Hommerding's allegations were accepted as true and the defendants had violated Minn. Stat. § 500.24, they would be negligent only if the violation resulted in the harm the statute sought to prevent. **Thies v. St. Paul's Evangelical Church**, 489 N.W.2d 277, 280 (Minn. App. 1992).

The legislature enacted Minn. Stat. § 500.24 to protect the state's interest

in a stable rural economy by encouraging and protecting family farms. Minn. Stat. § 500.24, subd. 1 (1992). The legislature sought to achieve this goal by restricting opportunities for corporate ownership of agricultural land. Ia. at subd. 3. One means of enforcing this restriction is requiring a redemption period in which rights of first refusal must be offered to the preceding owner. Id. at subd. 6.

It is undisputed that Travelers offered the right of first refusal to Hommerding. The harm for which Hommerding seeks redress is the loss of her farmstead through her inability to exercise her right of first refusal. This is not the harm the statute sought to prevent. The district court correctly held that negligence per se did not result from Hommerding's failure to

exercise her right properly. The district court also correctly ruled that Ridgeway was not negligent per se because the statute's requirement of filing reports did not create a duty between Ridgeway and Hommerding.

III

The record supports the district court's conclusion that Hommerding both insufficiently pleaded and inadequately supported her fraud claim. Hommerding alleged that Travelers and Ridgeway defrauded her by concealing Ridgeway's identity when it offered her the right of first refusal. Ridgeway's argument fails, however, because she neither pleaded nor offered evidence on the remaining nine elements of fraud. **See** Minn.R.Civ.P. 9.02; **Stubblefield v. Gruenberg**, 426 N.W.2d 912, 914 (Minn. App. 1988).

Neither has Hommerding established

the fiduciary relationship required for constructive fraud. **See Perl v. St. Paul Fire & Marine Ins. Co.**, 345 N.W.2d 209, 213 (Minn. 1984). She appears to argue that Ridgeway had an obligation to "disclose certain information," but the statute requires only that Ridgeway file reports with the state. See Minn. Stat. § 500.24, subd. 4 (1992).

In addition, Travelers' allegedly fraudulent conduct of not disclosing the name of the potential buyer is specifically permitted under the statute. See Minn. Stat. § 500.24, subd. 7(b) (1992) ("the seller's discretion, reference to the third party's identity may be deleted from the copy of the purchase agreement").

Finally, Hommerding argues that the district court erred by granting summary judgment to Travelers on the issue of a

purported failure to give her a right to lease the farm property in 1988. The record shows that this issue was not argued before the district court and consequently is not reviewable by this court. See Thayer v. American Fin. Advisors, Inc., 322 N.W.2d 599, 604 (Minn. 1982). Further, Hommerding does not appeal the district court's decision on intentional interference with prospective economic advantage (relative to the right of first refusal to buy the land), which was argued at trial and ruled on by the district court. Even if this issue had been properly raised, the district court's reasons for granting summary judgment are sufficient and supported by the record.

Affirmed.

STATE OF MINNESOTA	**IN DISTRICT COURT**
COUNTY OF STEARNS	**7TH JUDICIAL DISTRICT**
Marion Hommerding, Plaintiff, vs. The Travelers Insurance Company, a Connecticut Corporation, and Ridgeway Enterprises, Inc., a South Dakota Corporation, Defendants.	COURT FILE NO. C0-94-756 **ORDER**

The above-entitled matter came on for hearing before the Honorable Richard T. Jessen, Judge of the District Court, on the 29th day of June, 1994.

Lawrence Crosby appeared on behalf of Plaintiff. Hagerty, Johnson, Albrightson & Beitz, by James A. Beitz, appeared on behalf of Defendant Travelers Insurance Company. Lommen, Nelson, Cole & Stageberg, by James M. Lockhart, appeared on behalf of defendant Ridgeway

Enterprises.

NOW, having duly considered the arguments and memoranda of counsel, the documents and proceedings herein, together with the applicable law, this Court **ORDERS:**

THAT, Defendants' motion to dismiss Plaintiff's Complaint in its entirety pursuant to Minn. R. Civ. P. 12.02(e) and 9.02 is **GRANTED.**

There being no just reason for delay, the court administrator is ordered to enter judgment forthwith for both defendants dismissing the plaintiff's claims together with judgment for such costs and disbursements as may be properly allowed under the law.

THAT, the attached memorandum is made a part of this **ORDER.**

Dated this 26th day of July, 1994.

_____

Richard T. Jessen
Judge of District Court

MEMORANDUM

FACTS

This action arises out of two loans made by Defendant Travelers Ins. Co. ("Travelers") to Plaintiff Hommerding which were secured by certain farm real estate ("the farm"). Upon Hommerding's default, Travelers foreclosed on the farm mortgages. In February 1988, Travelers notified Hommerding of the proposed sale of the property and gave her a right of first refusal pursuant to Minn. Stat. Section 500.24, subd. 6. Hommerding failed to properly exercise that right and the farm was subsequently sold to Defendant Ridgeway Enterprises, Inc. ("Ridgeway").

In her Complaint, Hommerding alleges four counts: 1) intentional interference with prospective economic advantage; 2) void transfer of agricultural real

estate; 3) fraud; and 4) negligence. Defendants now move to dismiss Hommerding's Complaint in its entirety: 1) under Minn.R.Civ.P. 12.02 (failure to state a claim upon which relief can be granted); and 2) under Minn.R.Civ.P. 9.02 for failure to plead fraud with the requisite specificity.

DISCUSSION

A motion to dismiss will be granted only if it appears from the pleadings as a whole that there are no facts which could be introduced to support granting the relief demanded. Northern States Power Co. v. Franklin, 122 N.W.2 26 (Minn. 1963). Defendants move to dismiss pursuant to Minn.R.Civ.P. 12.02 and 9.02. Because matters outside the pleadings were presented to and considered by the trial court, defendants' motion to dismiss must be treated as one for

summary judgment. Shannon Sales Co., Inc. v. Williams, 490 N.W.2d 436, 438 (Minn.Ct.App. 1992); see Minn.R.Civ.P. 12.02. summary judgment is appropriate when "there is no genuine issue as to any material fact and ... either party is entitled to judgment as a matter of law." Shannon Sales, at 438. Where there is a motion for dismissal on Rule 12.02 grounds and it is treated as a summary judgment motion by inclusion of matters outside the pleadings, the motion should be granted if the nonmoving party does not produce specific facts that will establish a genuine issue of material fact. Id; Borom v. St. Paul, 184 N.W.2d 595 (Minn. 1971); see Murphy v. Country House, 240 N.W.2d 507 (Minn. 1976). Further, the non-moving party cannot rely on mere general statements of fact, but rather, must demonstrate that specific

facts exist which create a genuine issue for trial. Shannon Sales, at 438; see Valentine v. Conticommodity SVS, Inc., 344 N.W.2d 405 (Minn. 1984)

COUNT I

Defendants contend that Hommerding's Complaint fails to allege a cause of action for intentional interference with prospective economic advantage. The court agrees. Hommerding fails to allege or present evidence regarding three elements of such a claim: 1) that Travelers had a duty to allow her to inspect the property; 2) that Travelers had knowledge of the economic relationship; and 3) that Travelers intentionally interfered with the relationship. Hommerding only makes general allegations and fails to present specific facts to create a genuine issue of material fact on Count I.

Furthermore, Hommerding submitted an affidavit which contradicts the portion of her Complaint alleging intentional interference, paragraphs 13, 17 and 18. The affidavit states that Marilyn Hilsgen, Hommerding's sister-in-law, agreed to lend her $125,000 to enable Hommerding to exercise her right of first refusal. If Hommerding indeed had the funds available to exercise her right of first refusal, her claim that defendants interfered with her ability to obtain that financing is unpersuasive. Since Hommerding has failed to establish a genuine issue of material fact, summary judgment is appropriate on Count I.

As to Ridgeway, the Complaint fails to allege any cause of action.

COUNT II

Hommerding alleges that Traveler's sale of the farm to Ridgeway is a void

transfer of real estate under Minn.Stat. 500.24. Defendants, however, argue that Hommerding lacks standing to bring a claim under Section 500.24, because that statute only grants the Minnesota Attorney General the powers of enforcement and does not create a private right of action.

> Minn.Stat. S 500.24 provides in pertinent part:
>
> With reason to believe that a corporation... is violating subdivision 3, the attorney general shall commence an action in the district court....

Minn.Stat. S 500.24, Subd. 5. The language of S 500.24 shows that the legislature considered which parties would have powers of enforcement. The legislature expressly granted enforcement powers to the attorney general alone. There is no language indicating that

there was an intent to provide a private right of action under the statute. See Semrad v. Edina Realty, Inc., 493 N.W.2d 528, 532 (Minn. 1992)(court observed that the Real Estate Brokers Act did not provide a private cause of action, because it expressly granted enforcement powers to the commissioner of commerce alone and that, while the legislature was aware of the method by which it could create a private right of action, it opted not to do so).

The language of S 500.24 also shows that the legislature considered and provided a remedy for a violation of the statute. Where the legislative intent clearly shows the consequences of a statute's violation were considered, the failure to provide a private right of action is dispositive. Bruegger v. Faribault County Sheriff's Dept., 486

N.W.2d 463, 466 (Minn.Ct.App. 1992) ("a proper level of judicial restraint militates against declaration of a new form of civil liability not clearly declared by the legislature."); Jeffers v. Convoy Co., 636 F.Supp. 1337, 1341 (D.Minn. 1986). The remedy which Hommerding seeks, i.e. to void the transfer of the farm, is unavailable under the statute. There is no private remedy for a violation of Section 500.24. Indeed, the only consequences of the statute's violation requires the entity illegally possessing the property to divest itself of .that property within five years. Minn.Stat. Section 500.24, subd. 5. Nowhere in the statute is there a provision to treat the transfer as void.

Therefore, summary judgment is again appropriate on Count II, because no

genuine issue of material fact exists as to Hommerding's claim for void transfer of real estate.

COUNT III

Hommerding has alleged that Travelers fraudulently concealed the identity of Ridgeway, the purchaser of the farm. on the other hand, Defendants contend that Hommerding fails to plead her fraud claim with particularity. Minn.R.Civ.P. 9.02.

Hommerding alleges that Travelers failed to disclose the identity of Ridgeway when it offered her a right of first refusal and that she was damaged by this nondisclosure. However, she fails to include the remaining nine elements for a fraud claim, and therefore her Complaint should be dismissed for lack of sufficiency under Rule 9.02. See, Stubblefield v. Gruenberg, 426 N.W.2d 912

(Minn.App. 1988). Similarly, because Hommerding fails to set forth the requisite elements of fraud, no genuine issue of material fact exists on that claim, and summary judgment is appropriate.

More importantly, even if Hommerding had plead a prima facie case of fraud, Minn.Stat. S 500.24, Subd. 7(b) provides defendants with a valid defense. That provision allows the seller to delete a proposed buyer's identity from the copy of the purchase agreement in a notice of right of first refusal. Minn.Stat. S 500.24, Subd. 7(b). Therefore, Hommerding's fraud claim should be dismissed, because Travelers had the right to conceal Ridgeway's identity.

As to Ridgeway, the Complaint fails to allege any cause of action.

COUNT IV

Defendants argue that Hommerding fails to allege the four elements of negligence: 1) duty; 2) breach of duty; 3) injury; and (4) causation. Additionally, Defendants argue that Hommerding's negligence claim fails in substance, because Defendants owe no duty to Hommerding.

Since Section 500.24 provides for no private right of action, Hommerding has no standing to enforce any statutory duties Defendants may owe her. Moreover, Hommerding does not allege any special relationship with Defendants that may create a special duty owed to her. Without the requisite element of duty, there can be no claim for negligence.

Hommerding also asserts that Defendants' violation of Section 500.24 is negligence per se. Violations of statutory duties are negligence per se

when the violation results in the harm sought to be prevented. Thies v. St. Paulls Evangelical Church, 489 N.W.2d 277, 280 (Minn.Ct.App. 1992). The question then becomes whether Hommerding's injuries are the harm against which the statute was designed to protect. See Id. Although 500.24 was enacted to protect small family farmers such as Hommerding, it also provides for a redemption period in which rights of first refusal must be exercised. Minn.Stat. 500.24, Subd. 1, 6. The only duty Travelers owed Hommerding was to offer her a right of first refusal. Minn.Stat. S 500.24, Subd. 6. Since Travelers offered Hommerding this right pursuant to the statute and Hommerding failed to properly exercise it, this cannot be a case of negligence per se. Hommerding's injuries

were caused by her own neglect in failing to exercise her right of first refusal, not Defendants' alleged violation of the statute.

Accordingly, Defendants' motion to dismiss is granted on all four counts of Plaintiff's Complaint.

Supreme Court, U.S.
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(2)

No. 94-2110

In the
Supreme Court of the United States
October Term, 1994

MARION HOMMERDING,
Petitioner,

v.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut Corporation,
Respondent,

RIDGEWAY ENTERPRISES, INC.,
a South Dakota Corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

RESPONDENT RIDGEWAY ENTERPRISES, INC.'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Minn. Stat. § 500.24 ("Corporate Use of Agricultural Lands" statute), restricts opportunities for corporate ownership of agricultural land in Minnesota, delegates enforcement powers to the State's Attorney General and penalizes violators with mandated divestiture of the property within five years.

The questions presented are:

I. Whether Minn. Stat. § 500.24, which does not explicitly create a private cause of action, should be construed, under Minnesota law, so as to implicitly create such a cause of action.

II. Whether Minn. Stat. § 500.24's corporate filing requirements create a duty owed by Respondent Ridgeway Enterprises, Inc., the purchaser of the farm real estate, to Petitioner Hommerding, the farm real estate's former owner.

III. Whether a sale of farm real estate can be declared null and void due to an alleged violation of Minn. Stat. § 500.24.

LIST OF PARTIES

The list of all parties to the proceeding in the court whose judgment Petitioner seeks to have reviewed include:

I. Respondent Ridgeway Enterprises, Inc., a South Dakota corporation. There is no parent or subsidiary company.
II. Respondent The Travelers Insurance Company.
III. Petitioner Marion Hommerding.

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ON PETITION FOR A WRIT OF CERTIORARI TO
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RESPONDENT RIDGEWAY ENTERPRISES, INC.'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This action arises out of two loans made by Respondent The Travelers Insurance Company (Travelers) to Petitioner Marion Hommerding (Petitioner) which were secured by certain farm real estate. Upon Petitioner's default, Travelers foreclosed on the farm mortgages. In February 1988, Travelers notified Petitioner of the proposed sale of the property and gave her a right of first refusal pursuant to Minn. Stat. § 500.24, subd. 6. Petitioner failed to exercise the right and the farm real estate was subsequently sold to Respondent Ridgeway Enterprises, Inc. (Ridgeway). Petitioner brought this lawsuit against Travelers and Ridgeway arising out of the sale of the farm real estate to Ridgeway.

In her complaint, Petitioner alleged that the farm real estate in question was sold to Ridgeway by Travelers in violation of Minn. Stat. § 500.24, subd. 2(d)(6). Petitioner sought to have the sale declared void due to the alleged violation of this statute. Petitioner also alleged in a count entitled "Negligence, Direct and Proximate Damages" that Travelers and Ridgeway "had a duty to meet the obligations imposed on each defendant by law." The count further alleged that this asserted duty was breached by Travelers and Ridgeway and the breaches of duty harmed Petitioner financially.

Based on the allegations of Petitioner's complaint, both Ridgeway and Travelers sought dismissal pursuant to Minn. R. Civ. P. 12.02 (failure to state a claim upon which relief can be granted). Because Petitioner, in response, brought in matters outside the pleadings, Travelers and Ridgeway's motions to dismiss were treated by the trial court in accord with Rule 12.02 as motions for summary judgment.

The trial court granted Travelers and Ridgeway's motions to dismiss based on the summary judgment standard, separately addressing each count of Petitioner's complaint. The Minnesota Court of Appeals affirmed. The Minnesota Supreme Court denied Petitioner's Petition for Further Review.

The district court and the Minnesota Court of Appeals' decisions are based on an application and interpretation of Minn. Stat. § 500.24. The courts held that Petitioner's complaint failed to state a cause of action and that Petitioner lacked standing to enforce Minn. Stat. § 500.24.

The courts concluded the language of Minn. Stat. § 500.24 reveals that the Minnesota Legislature considered who would have the power of enforcement and the Legislature expressly granted enforcement power for the statute's violation to the State's Attorney General alone. Since the statute shows no intent to provide a private right of action, none can be granted by the court. The Minnesota Court of Appeals concluded that although family farmers derive some benefit from the statute's protection of family farms, the benefit is indirect. The benefits serve the state's overall interests and Petitioner does not belong to a specially protected class.

Further, the remedy which Petitioner seeks under the statute -- to void the transfer of the farm to Ridgeway -- is unavailable under the statute. There is no such private remedy created for a violation of § 500.24. The statute penalizes violators by requiring mandatory divestiture of that property within five years. Minn. Stat. § 500.24, subd. 5.

With regard to Petitioner's assertion that Travelers and Ridgeway's violation of § 500.24 constitutes negligence per se, the statute provides for a redemption period in which rights of first refusal must be exercised. Minn. Stat. § 500.24, subd.6.

The only duty Travelers owed Petitioner was to offer her a right of first refusal. Since Travelers offered Petitioner this right pursuant to the statute and Petitioner failed to properly exercise it, this cannot be a case of negligence per se.

With regard to Ridgeway, Ridgeway cannot be negligent per se because the statute's requirement of filing reports did not create a duty owed by Ridgeway to Petitioner. Ridgeway owes Petitioner no common law or statutory duty.

REASONS FOR DENYING THE WRIT

This case concerns solely the application and interpretation of Minn. Stat. § 500.24. This case does not involve, in any respect, a question of federal law. On that basis, the writ should be denied.

Petitioner's assertion in her petition for certiorari that her constitutional rights to due process have been ignored was never raised as an issue before the Minnesota state courts and should be deemed waived. Petitioner has not and does not assert that Minn. Stat. § 500.24 itself is somehow repugnant to the United States Constitution. In her petition, Petitioner does not assert that the alleged constitutional due process violation is a violation of the United States Constitution.

In any event, Petitioner's newly asserted constitutional argument is meritless. Ridgeway sought dismissal of this case pursuant to Minn. R. Civ. P. 12 -- the equivalent of Fed. R. Civ. P. 12. Because Petitioner in response brought in matters outside the pleadings, the motion to dismiss was treated by the trial court as a motion for summary judgment and that standard of review was applied. In Minnesota, the standard of review for summary judgment is the equivalent of that applied by the federal courts, which requires the court to view the

facts most favorable to the nonmoving party. This standard of review was followed. There is no basis for Petitioner's assertion that her due process rights were violated.

CONCLUSION

Respondent Ridgeway Enterprises, Inc. respectfully requests that Petitioner Hommerding's Petition for a Writ of Certiorari be denied.

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Respondents.

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RESPONDENT THE TRAVELERS INSURANCE COMPANY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Court should review the decision of the Minnesota Court of Appeals affirming the trial court's grant of summary judgment where that decision was made independently of federal law and pursuant to considerations of state law only?

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TO THE MINNESOTA SUPREME COURT

RESPONDENT THE TRAVELERS INSURANCE COMPANY'S BRIEF IN OPPOSITION

Respondent The Travelers Insurance Company respectfully prays that the Court deny the petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Petitioner asserts that this Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1257 (1988). As explained more fully below, this matter does not involve any

federal constitutional or statutory issue upon which this Court may base jurisdiction.

RELEVANT STATUTORY PROVISIONS

This case involves application of the Minnesota Corporate and Partnership Farming Statute MINN. STAT. § 500.24 (1994) (the "Farm Act"), and MINN. STAT. § 8.31 subd. 3a (1994) (the "Private Attorney General Statute"). The pertinent sections of those laws are set forth in their entirety in Respondent's Appendix, in accordance with SUP.CT.R. 24.1(f).

STATEMENT OF THE CASE

Petitioner Marion Hommerding seeks to enforce the Farm Act as a purported "private attorney general," challenges as negligent per se Travelers Insurance Company's[1] 1988 sale to Ridgeway Enterprises, Inc. of certain farm land previously owned by Hommerding, and asserts that the state court decisions dismissing her claims denied her due process. The state trial court dismissed Hommerding's complaint on the grounds that it failed to state causes of action for negligence, fraud and interference with prospective opportunity, that she had admitted facts which compelled dismissal of her claim for interference with prospective opportunity, that she lacked standing as a private attorney general to enforce the Farm Act, and that Travelers' statutory defenses compelled dismissal of her fraud claim.

The Minnesota Court of Appeals affirmed, holding that a private cause of action did not exist, that Hommerding could not maintain an action for negligence per se based on an

[1] Travelers is a Connecticut Corporation owned by The Travelers Insurance Group, Inc., a Connecticut Corporation.

alleged violation of the Farm Act because the harm for which she sought redress was not the harm the Farm Act sought to prevent, and that Hommerding had insufficiently pleaded and inadequately supported her claim for fraud. *Hommerding v. The Travelers Ins. Co.*, No. 94-1843, slip op. (Minn. Ct. App. 1995). (A.2.) The Minnesota Supreme Court denied Hommerding's petition for further review. (A.1.) Hommerding petitions this Court for further review on the grounds that the state court decisions were wrong and, therefore, denied her due process.

STATEMENT OF FACTS

This case follows numerous cases, commencing in 1984, in which Hommerding sued Travelers for various alleged wrongdoings arising out of two farm loans which Travelers made to Hommerding in 1976 and 1981. Travelers foreclosed Hommerding's mortgages for non-payment and purchased the land at the foreclosure sale in 1984. (A.3.) Hommerding, however, continued to occupy the land, and Travelers was forced to evict her in 1986 because she refused to leave or to pay Travelers rent.

In February, 1988, Travelers received an offer for the land and gave Hommerding a right of first refusal in accordance with the Farm Act. (A.11.) Hommerding exercised her right of first refusal, but was unable to make the payments required of her. (A.11.) Travelers then sold the property to Ridgeway.

In seeking to overturn that sale, Hommerding alleges that she sought financing with which to exercise her right of first refusal, but that Travelers refused her and her prospective lender access to the premises. (Petitioner's Brief at 4.) However, she also admitted that a second lender promised to loan her the money to buy the land without the need for inspection. (A.21.)

SUMMARY OF THE ARGUMENT

Hommerding's Petition rests on three arguments: (1) the state courts incorrectly denied Hommerding standing as a private attorney general, (2) the state courts incorrectly interpreted the Farm Act in dismissing Hommerding's claims for negligence per se, and (3) the state court decisions denied her due process. Those arguments derive exclusively from decisions interpreting and applying state law. Hommerding has advanced no theory or argument to which this Court may extend its jurisdiction. Therefore, it should deny the Petition.

ARGUMENT

THE COURT DOES NOT HAVE JURISDICTION OVER THE QUESTIONS PRESENTED BY THIS PETITION BECAUSE THEY ARE ENTIRELY QUESTIONS OF STATE LAW.

The United States Supreme Court is vested with jurisdiction to review decisions of the highest courts of the states. 28 U.S.C. § 1257(a) (1988). However, this power is not unlimited.

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari *where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States*, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or

> the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id. (emphasis added). This Court has incorporated that statutory provision into its rules of court. Supreme Court Rule 10 identifies the "character" of questions that may warrant its discretionary writ of certiorari:

* * * *

> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

SUP.CT.R. 10.1. While the above "neither control[s] nor fully measur[es] the Court's discretion," *id.* at 10.1, it is apparent that some type of federal question must be presented in order properly to invoke this Court's jurisdiction.

As Justice Jackson observed:

> [t]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power

> over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945) (citations omitted). Justice Harlan followed that same reasoning twenty years later: "[t]his Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194, 197 (1965); *see also* 28 U.S.C. § 1257(a) (1988); SUP.CT.R. 10.1 (b)-(c).

Hommerding's petition does not meet the principles advanced in *Pitcairn* and *Kirchner* and is insufficient to invoke the Court's jurisdiction. *See McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) (holding that this Court will only review state court decisions in which federal questions were raised or addressed). Rather than basing her petition on a federal question, Hommerding argues that this Court should review the Minnesota courts' decisions because they contain errors of interpretation of Minnesota law (Petitioner's Brief at 6-16) and because those alleged errors denied her due process. (*Id.* at 17.)

In fact, her petition rests entirely on her disagreement with the state court decisions, and she offers no cogent argument for her assertion that those decisions denied her due process. The Minnesota Court of Appeals disposed of her claims entirely and correctly based on state law. *See Hommerding v. Travelers*. (A.2 - A.14.) It decided that Hommerding did not have standing to assert a cause of action under the Farm Act because the Farm Act does not explicitly authorize a private cause of action. (A-5.) That decision is consistent with Minnesota law. *See* MINN. STAT. § 500.24; *see also Bruegger v. Faribault County Sheriff's Dept.*, 497 N.W.2d 260 (Minn. 1993). The court of appeals also refused

to imply a private cause of action under the Farm Act. In reaching that decision, the court relied on the three factors established by this Court in *Cort v. Ash*, 422 U.S. 66, 78 (1975), and determined: (1) that it is the state, and not the individual farmer for whose benefit the statute was enacted; (2) that the Minnesota legislature did not indicate an intent to create such a cause of action; and (3) that the state reserved to itself enforcement of the statute. (A.6 - A.8.) That holding conforms to the language of the Farm Act itself: "it is in the interests of *the state* to encourage and protect the family farm. . . ." MINN. STAT. § 500.24, subd. 1 (emphasis added).

Similarly, the court of appeals declined, absent the express or implied legislative intent, to create a new cause of action under the Private Attorney General Statute. (*Id.* at A.4.) The Private Attorney General Statute provides that private remedies may be available to "any person injured by a violation of any of the laws referred to in subdivision 1. . . ." Subdivision 1 is limited to unfair, discriminatory, and other unlawful practices in business, commerce or trade. MINN. STAT. § 8.31, subd. 1. It does not refer to the Farm Act or to statutory categories including the Farm Act.

The court of appeals also rejected Hommerding's negligence per se argument, reasoning that the harm Hommerding allegedly suffered -- her inability to exercise a right of first refusal -- did not amount to the harm the statute sought to prevent. (A.10 - A.12.) That holding, too, comports with state law. *See Thies v. St. Paul's Evangelical Church*, 489 N.W.2d 277 (Minn. Ct. App. 1992).

Hommerding's Petition requests this Court to rewrite Minnesota law. It states that "[a] private attorney general cause of action under Minnesota Statutes, Section 500.24, *should exist* where the person bringing suit, a member of class [sic] protected by the statute, has been harmed by direct violation of the statute." (Petitioner's Brief at i.) (emphasis added). That request is beyond the scope of this Court's

authority. *See Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124 (1978) (holding that the Due Process Clause does not empower the judiciary to act as a "superlegislature").

Finally, Hommerding's contention that "her constitutional rights to due process have been ignored by the Courts of the State of Minnesota" (Petitioner's Brief at 17), is insufficient to invoke the Court's jurisdiction. *See Bowe v. Scott*, 233 U.S. 658, 664-65 (1914) (holding that the contention that an ordinance effects a taking "without due process of law," with no reference to the U.S. Constitution, "affords no basis whatever for invoking the jurisdiction of this Court").

CONCLUSION

The Petition sets forth questions of state law only, and Hommerding has exhausted her remedies under state law. This Court is not the appropriate forum for resolution of those issues. Therefore, respondent Travelers Insurance Company respectfully requests that the Court deny the Petition for Writ of Certiorari.

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RESPONDENT'S APPENDIX

MINN. STAT. § 500.24 subdivisions 3 and 5

Subd. 3. Farming and ownership of agricultural land by corporations restricted. No corporation, limited liability company, pension or investment fund, or limited partnership shall engage in farming; nor shall any corporation, limited liability company, pension or investment fund, or limited partnership, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state. Livestock that are delivered for slaughter or processing may be fed and cared for by a corporation up to 20 days prior to slaughter or processing. Provided, however, that the restrictions in this subdivision do not apply to corporations or partnerships in clause (b) and do not apply to corporations, limited partnerships, and pension or investment funds that record its name and the particular exception under clauses (a) to (s) under which the agricultural land is owned or farmed, have a conservation plan prepared for the agricultural land, report as required under subdivision 4, and satisfy one of the following conditions under clauses (a) to (s):

(a) a bona fide encumbrance taken for purposes of security;

(b) a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership as defined in subdivision 2 or a general partnership;

(c) agricultural land and land capable of being used for farming owned by a corporation as of May 20, 1973, or a

pension or investment fund as of May 12, 1981, including the normal expansion of such ownership at a rate not to exceed 20 percent of the amount of land owned as of May 20, 1973, or, in the case of a pension or investment fund, as of May 12, 1981, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(d) agricultural land operated for research or experimental purposes with the approval of the commissioner of agriculture, provided that any commercial sales from the operation must be incidental to the research or experimental objectives of the corporation. A corporation, limited partnership, or pension or investment fund seeking to operate agricultural land for research or experimental purposes must submit to the commissioner a prospectus or proposal of the intended method of operation, containing information required by the commissioner including a copy of any operational contract with individual participants, prior to initial approval of an operation. A corporation, limited partnership, or pension or investment fund operating agricultural land for research or experimental purposes prior to May 1, 1988, must comply with all requirements of this clause except the requirement for initial approval of the project;

(e) agricultural land operated by a corporation or limited partnership for the purpose of raising breeding stock, including embryos, for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod. An entity that is organized to raise livestock other than dairy cattle under this clause that does not meet the definition requirement for an authorized farm corporation must:

(1) sell all castrated animals to be fed out or finished to farming operations that are neither directly or (sic)

indirectly owned by the business entity operating the breeding stock operation; and

(2) report its total production and sales annually to the commissioner of agriculture;

(f) agricultural land and land capable of being used for farming leased by a corporation or limited partnership in an amount, measured in acres, not to exceed the acreage under lease to such corporation as of May 20, 1973, or to the limited partnership as of May 1, 1988, and the additional acreage required for normal expansion at a rate not to exceed 20 percent of the amount of land leased as of May 20, 1973, for a corporation or May 1, 1988, for a limited partnership in any five-year period, and the additional acreage reasonably necessary to meet the requirements of pollution control rules;

(g) agricultural land when acquired as a gift (either by grant or a devise) by an educational, religious, or charitable nonprofit corporation or by a pension or investment fund or limited partnership; provided that all lands so acquired by a pension or investment fund, and all lands so acquired by a corporation or limited partnership which are not operated for research or experimental purposes, or are not operated for the purpose of raising breeding stock for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod must be disposed of within ten years after acquiring title thereto;

(h) agricultural land acquired by a pension or investment fund or a corporation other than a family farm corporation or authorized farm corporation, as defined in subdivision 2, or a limited partnership other than a family farm partnership or authorized farm partnership as defined in subdivision 2, for which the corporation or limited partnership has documented

plans to use and subsequently uses the land within six years from the date of purchase for a specific nonfarming purpose, or if the land is zoned nonagricultural, or if the land is located within an incorporated area. A pension or investment fund or a corporation or limited partnership may hold such agricultural land in such acreage as may be necessary to its nonfarm business operation; provided, however, that pending the development of agricultural land for nonfarm purposes, such land may not be used for farming except under lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership, or except when controlled through ownership, options, leaseholds, or other agreements by a corporation which has entered into an agreement with the United States of America pursuant to the New Community Act of 1968 (Title IV of the Housing and Urban Development Act of 1968, United States Code, title 42, sections 3901 to 3914) as amended, or a subsidiary or assign of such a corporation;

(i) agricultural lands acquired by a pension or investment fund or a corporation or limited partnership by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, however, that all lands so acquired be disposed of within ten years after acquiring the title if acquired before May 1, 1988, and five years after acquiring the title if acquired on or after May 1, 1988, acquiring the title thereto, and further provided that the land so acquired shall not be used for farming during the ten-year or five-year period except under a lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership. The aforementioned ten-year or five-year limitation period shall be deemed a covenant running with the title to the land against any grantee, assignee, or successor of the pension or

investment fund, corporation, or limited partnership. Notwithstanding the five-year divestiture requirement under this clause, a financial institution may continue to own the agricultural land if the agricultural land is leased to the immediately preceding former owner, but must divest of the agricultural land within the ten-year period. Livestock acquired by a pension or investment fund, corporation, or limited partnership in the collection of debts, or by a procedure for the enforcement of lien or claim on the livestock whether created by security agreement or otherwise after August 1, 1994, must be sold or disposed of within one full production cycle for the type of livestock acquired or 18 months after the livestock is acquired, whichever is later;

(j) agricultural land acquired by a corporation regulated under the provisions of Minnesota Statutes 1974, chapter 216B, for purposes described in that chapter or by an electric generation or transmission cooperative for use in its business, provided, however, that such land may not be used for farming except under lease to a family farm unit, a family farm corporation, or a family farm partnership;

(k) agricultural land, either leased or owned, totaling no more than 2,700 acres, acquired after May 20, 1973, for the purpose of replacing or expanding asparagus growing operations, provided that such corporation had established 2,000 acres of asparagus production;

(l) all agricultural land or land capable of being used for farming which was owned or leased by an authorized farm corporation as defined in Minnesota Statutes 1974, section 500.24, subdivision 1, clause (d), but which does not qualify as an authorized farm corporation as defined in subdivision 2, clause (d);

(m) a corporation formed primarily for religious purposes whose sole income is derived from agriculture;

(n) agricultural land owned or leased by a corporation prior to August 1, 1975, which was exempted from the restriction of this subdivision under the provisions of Laws 1973, chapter 427, including normal expansion of such ownership or leasehold interest to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1975, in any five-year period and the additional ownership reasonably necessary to meet requirements of pollution control rules;

(o) agricultural land owned or leased by a corporation prior to August 1, 1978, including normal expansion of such ownership or leasehold interest, to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1978, and the additional ownership reasonably necessary to meet requirements of pollution control rules, provided that nothing herein shall reduce any exemption contained under the provisions of Laws 1975, chapter 324, section 1, subdivision 2;

(p) an interest in the title to agricultural land acquired by a pension fund or family trust established by the owners of a family farm, authorized farm corporation or family farm corporation, but limited to the farm on which one or more of those owners or shareholders have resided or have been actively engaged in farming as required by subdivision 2, clause (b), (c), or (d);

(q) agricultural land owned by a nursing home located in a city with a population, according to the state demographer's 1985 estimate, between 900 and 1,000, in a county with a population, according to the state demographer's 1985

estimate, between 18,000 and 19,000, if the land was given to the nursing home as a gift with the expectation that it would not be sold during the donor's lifetime. This exemption is available until July 1, 1995;

(r) the acreage of agricultural land and land capable of being used for farming owned and recorded by an authorized farm corporation as defined in Minnesota Statutes 1986, section 500.24, subdivision 2, paragraph (d), or a limited partnership as of May 1, 1988, including the normal expansion of the ownership at a rate not to exceed 20 percent of the land owned and recorded as of May 1, 1988, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(s) agricultural land owned or leased as a necessary part of an aquatic farm as defined in section 17.47, subdivision 3.

* * *

Subd. 5. Enforcement. With reason to believe that a corporation, limited partnership, or pension or investment fund is violating subdivision 3, the attorney general shall commence an action in the district court in which any agricultural lands relative to such violation are situated, or if situated in two or more counties, in any county in which a substantial part of the lands are situated. The attorney general shall file for record with the county recorder or the registrar of titles of each county in which any portion of said lands are located a notice of the pendency of the action as provided in section 557.02. If the court finds that the lands in question are being held in violation of subdivision 3, it shall enter an order so declaring. The attorney general shall file for record any such order with the county recorder or the registrar of titles of each county in

which any portion of said lands are located. Thereafter, the pension or investment fund, limited partnership, or corporation owning such land shall have a period of five years from the date of such order to divest itself of such lands. The aforementioned five-year limitation period shall be deemed a covenant running with the title to the land against any pension or investment fund, limited partnership, or corporate grantee or assignee or the successor of such pension or investment fund, limited partnership, or corporation. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law.

MINN. STAT. § 831 subdivisions 1 and 3a

8.31. Additional duties of the attorney general

Subdivision 1. Investigate offenses against the provisions of certain designated sections; assist in enforcement. The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the nonprofit corporation act (sections 317A.001 to 317A.909), the act against unfair discrimination and competition (sections 325D.01 to 325D.08), the unlawful trade practices act (sections 325D.09 to 325D.16), the antitrust act (sections 325D.49 to 325D.66), section 325F.67 and other laws against false or fraudulent advertising, the antidiscrimination acts contained in section 325D.67, the act against monopolization of food products (section 325D.68), the act regulating telephone advertising services (section 325E.39), the prevention of consumer fraud act (sections 325F.68 to 325F.70), and chapter 53A regulating currency exchanges and assist in the enforcement of those laws as in this section provided.

* * *

Subd. 3a. Private remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.